



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Los Angeles Regional Office
444 South Flower Street, Suite 900
Los Angeles, CA 90071

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DIVISION OF ENFORCEMENT

Donald W. Searles
Senior Trial Counsel
(323) 965-5473
searlesd@sec.gov

November 4, 2021

VIA ECF

Hon. Mary K. Vyskocil
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, N.Y. 10007-1312

Re: *SEC v. Hurgin et al.*, No. 1:19-cv-05705-MKV

Dear Judge Vyskocil:

The SEC is writing to supplement its letter motion to request an extension of the period in which to conduct fact discovery. *See* Dkt. No. 95.

In its original request, the SEC sought a 10-day extension of the close fact discovery from November 1, 2021 to November 10, 2021, in order to take the testimony of Evyatar Cohen under the Hague Convention to preserve his testimony for trial. Ability Inc.'s counsel in Israel, however, requested that Mr. Cohen's testimony be delayed until late November or early December. The court in Israel granted the request, and has scheduled Mr. Cohen's testimony for December 8, 2021. Accordingly, the SEC requests that the close of fact discovery be extended to that date, solely for the purpose of obtaining Mr. Cohen's testimony.

As previously stated, the SEC anticipates that Mr. Cohen's testimony will be short because the SEC simply seeks to have him affirm his prior investigative testimony. With respect to the nearly one dozen depositions of third party witnesses taken to date, where the witness previously testified in connection with the SEC's investigation, Defendants have agreed to waive their objections to the introduction of the witness's prior testimony on the basis that the prior testimony is hearsay, or that the Defendants were not present for the witness's testimony, provided the testimony may otherwise be used under the Federal Rules of Civil Procedure. Defendants, however, will not stipulate to waive any objections to Mr. Cohen's testimony. As a result, we have arranged for Mr. Cohen's deposition in Israel so as to avoid Defendants' hearsay objection to the use of his prior investigative testimony at trial.

The SEC respectfully submits that good cause exists to extend the close of fact discovery to December 8, solely for the purpose of obtaining Mr. Cohen's testimony. All other dates in this case,

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including expert disclosures on November 1, 2021, shall remain in effect. In that regard, the SEC made its initial expert disclosures pursuant to Rule 26(a)(2) on November 1; as such, its requested continuance of the close of fact discovery will not serve to prolong the expert discovery period, which closes on January 14, 2022. Moreover, Defendants' counsel requested that we adjourn the post-discovery conference until the close of expert discovery. We have accommodated counsel's request by signing a joint letter to the court (ECF Docket #98), requesting that the conference be scheduled for January 14 or shortly thereafter. If the Court grants the request, then all discovery, including Mr. Cohen's testimony, will be completed by the post-discovery conference.

Thank you again for your consideration of this request.

Sincerely,

/s/ Donald W. Searles
Donald W. Searles
Counsel for Plaintiff SEC

cc: Jason P. Gottlieb
Daniel C. Isaacs
Edward Paul Gilbert

The Court has carefully reviewed the parties' letters concerning the SEC's request, over Defendants' opposition, for an extension of time to complete discovery. The SEC's request is GRANTED. Fact discovery is extended through December 8, 2021 for the purpose of obtaining Mr. Cohen's testimony only. All discovery must be completed by January 14, 2022. No further extensions of time to conduct discovery will be granted. The telephone conference that was previously scheduled to take place on December 9, 2021 is ADJOURNED to January 20, 2022 at 11:00 AM. The Clerk of Court is respectfully requested to terminate the letter motions pending at docket entries 95, 98, and 99.

Date: Nov. 9, 2021
New York, New York

Mary Kay Vyskocil
Mary Kay Vyskocil
United States District Judge